

CIVIL PENALTIES FOR FAILURE TO FILE VESSEL UTILIZATION AND PERFORMANCE REPORTS

JUNE 8, 1956.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

Mr. BONNER, from the Committee on Merchant Marine and Fisheries,
submitted the following

REPORT

[To accompany S. 3265]

The Committee on Merchant Marine and Fisheries, to whom was referred the bill (S. 3265) to amend title II of the Merchant Marine Act, 1936, as amended, to provide for filing vessel utilization and performance reports by operators of vessels in the foreign commerce of the United States, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

The purpose of this act is to amend title II of the Merchant Marine Act of 1936, as amended, by adding a new section designated 212 (A), which would provide that ship operators engaged in the waterborne foreign commerce of the United States shall be subject to civil penalties for failure to file vessel utilization and performance reports in accordance with regulations prescribed by the Secretary of Commerce.

The filing of such reports is presently required, but enforcement is sometimes difficult because the only recourse is through criminal penalties. In practice, the effort to obtain the conviction under the existing penalty provisions of the 1936 act through criminal proceedings involves so much time and expense that such proceedings have not been instituted against delinquents for failure or delay in filing of reports. Tardy filing of a statistical report, even though it is important to proper administration of the law, hardly justifies resort to a criminal proceeding, in which knowing and willful violation must be proved, and no authority to remit or mitigate the penalty is provided. It is believed that a civil penalty with authority to remit or mitigate would make it possible to secure satisfactory compliance with report requirements.

The reports under consideration consist of a summary of the ship's cargo manifest, together with specific ship operating data not now

filed with any one Federal agency report. Collectors of customs are charged with the responsibility of receiving the reports in the field. The existing law and the bill apply to operators of all vessels engaged in the foreign commerce of the United States. If the measure is enacted, it is contemplated that the reports will be substantially in the form now in use under regulations of the Secretary of Commerce, and will be required to be filed as at present. The enactment of the measure would not require an additional expenditure of funds but, on the contrary, it is expected to lessen the cost to the Government of collecting and processing these reports.

The bill would permit the Secretary of Commerce, in his discretion, to remit or mitigate any penalty involved under this proposed legislation, on such terms as he may deem proper. Your committee understands this provision to indicate that, in the event of a failure to file within the time prescribed, by an operator whose performance in this respect has been satisfactory, reasonable evidence to the effect that such failure was unintentional and unavoidable will be a persuasive consideration for leniency on the part of the Secretary of Commerce. Thus the objectives of the bill can be realized, and enforcement of filing regulations strengthened, without unduly harsh penalties on any operator.

The measure is in the form submitted to the Congress by the Secretary of Commerce (Executive Communication 1022), with the approval of the Director of the Bureau of the Budget.

The departmental report follows:

THE SECRETARY OF COMMERCE,
Washington 25, May 28, 1956.

HON. HERBERT C. BONNER,
*Chairman, Committee on Merchant Marine and Fisheries,
House of Representatives, Washington 25, D. C.*

DEAR MR. CHAIRMAN: This letter is in reply to your request of May 2, 1956, for the views of this Department with respect to S. 3265, an act to amend title II of the Merchant Marine Act, 1936, as amended, to provide for filing vessel utilization and performance reports by operators of vessels in the foreign commerce of the United States.

General Order 39 of the Federal Maritime Board provides for the filing of vessel utilization and performance reports* (16 F. R. 859). Under section 806 (d) of the Merchant Marine Act, 1936, as amended, violation of any order, rule, or regulation of the Secretary of Commerce or the Federal Maritime Board, for which no penalty is otherwise provided is punishable upon conviction by a fine of not more than \$500 and, if such violation continues, each day constitutes a separate offense.

Under present regulations, vessel operators have 10 days (excluding Saturdays, Sundays, and holidays), after entering the first United States port, and after clearing the last United States port, to file the required reports. Some vessel operators have been tardy in filing these reports and much time and effort are unnecessarily spent in getting the reports in.

These reports are the source from which tabulations and studies are prepared which provide essential data and useful information for the American commercial public regarding ocean commerce and foreign trade, as well as for the use of the Department of Commerce, the Departments of Defense and Justice, and other Government agencies.

The data in these reports are needed by the Secretary of Commerce and the Federal Maritime Board in the administration of the Merchant Marine Act, 1936, including such duties, among others, as the determination of essential trade routes (sec. 211 (a)); study of all maritime problems (sec. 212 (a)); determination of necessity of meeting foreign-flag competition and promotion of foreign commerce of the United States (sec. 601 (a) and sec. 602); determination of substantial disadvantage of United States flag vis-a-vis foreign flag operators (sec. 603 (b)); determination of inadequacy of service, or determination of undue advantage as between citizens (sec. 605 (c)); and determination of necessity for change in service (sec. 606 (3)).

To obtain a conviction under the penalty provisions of the 1936 act, involves so much time and expense that criminal proceedings have not been instituted under that act against delinquents for delayed filing of reports. Tardy filing of a statistical report, even though it is important to proper administration of the law, hardly justifies resort to a criminal proceeding in which knowing and willful violation must be proved and no authority to remit or mitigate the penalty is provided. It is believed that a civil penalty, with authority to remit or mitigate, instead of a criminal proceeding, would make it possible to secure satisfactory compliance with report requirements.

The reports under consideration consist of a summary of the ship's cargo manifest, together with specific ship operating data not now filed with any one Federal agency report. Collectors of customs are charged with the responsibility of receiving the reports in the field. The existing law and the bill apply to operators of all vessels engaged in the foreign commerce of the United States. If the bill is enacted, it is contemplated that the reports will be substantially in the form now in use under General Order 39, and will be required to be filed as at present. The enactment of the bill would not require any additional expenditure of funds but, on the contrary, is expected to lessen the costs to the Government of collecting and processing these reports.

The bill is in the form submitted to the Congress July 22, 1955, by the Secretary of Commerce (Executive Communication 1022), with the approval of the Director of the Bureau of the Budget.

Sincerely yours,

SINCLAIR WEEKS,
Secretary of Commerce.

CHANGES IN EXISTING LAW

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as introduced, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

MERCHANT MARINE ACT, 1936

SEC. 212. (A) The operator of a vessel in waterborne foreign commerce of the United States shall file at such times and in such manner as the Secretary of Commerce may prescribe by regulations, such report, account, record, or memorandum relating to the utilization and performance of such vessel in commerce of the United States, as the Secretary

may determine to be necessary or desirable in order to carry out the purposes and provisions of this Act, as amended. Such report, account, record, or memorandum shall be signed and verified in accordance with regulations prescribed by the Secretary. An operator who does not file the report, account, record, or memorandum as required by this section and the regulations issued hereunder, shall be liable to the United States in a penalty of \$50 for each day of such violation. The amount of any penalty imposed for any violation of this section upon the operator of any vessel shall constitute a lien upon the vessel involved in the violation, and such vessel may be libeled therefor in the district court of the United States for the district in which it may be found. The Secretary of Commerce may, in his discretion, remit or mitigate any penalty imposed under this section on such terms as he may deem proper.

